

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class SCOTT S. SHEPHERD
United States Air Force**

ACM 34766

20 August 2002

Sentence adjudged 30 August 2001 by GCM convened at Seymour Johnson Air Force Base, North Carolina. Military Judge: Mary M. Boone (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 2 years, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Captain Jennifer K. Martwick.

Appellate Counsel for the United States: Colonel Anthony P. Dattilo, Lieutenant Colonel David N. Cooper, and Major Jennifer R. Rider.

Before

SCHLEGEL, BRESLIN, and PECINOVSKY
Appellate Military Judges

OPINION OF THE COURT

SCHLEGEL, Senior Judge:

The appellant pled guilty and was convicted of one specification of wrongfully using cocaine and four specifications of wrongfully using marijuana, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. Contrary to his plea, he was also convicted of willful dereliction of duty by failing to safeguard sensitive personnel information, in violation of Article 92, UCMJ, 10 U.S.C. § 892. His approved sentence was a bad-conduct discharge, confinement for 2 years, forfeiture of all pay and allowances, and reduction to E-1. Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), the appellant argues the evidence is only sufficient to sustain a conviction for negligent dereliction of duty. We affirm the findings and sentence.

The appellant was an administrative apprentice for his squadron. According to his enlisted performance report, he performed all information management functions for the avionics flight, to include using the Personnel Concept-III (PC-III) system. The PC-III system can be used to generate an alphabetical roster (alpha roster). A typical alpha roster includes significant information about individuals assigned to an organization, including specific military data and personal information protected by the Privacy Act of 1974, 10 U.S.C. § 8013. The evidence at trial showed the appellant was trained about the Privacy Act and the requirement to protect personal information.

The appellant became a suspect during an investigation into fraudulent cellular telephone accounts that were established by using personal information about squadron members. During a search of the appellant's car authorized by a military magistrate, a unit alpha roster consisting of 58 pages was found along with two yellow Post-it notes and a torn piece of paper. The alpha roster contained names, social security numbers, home addresses and telephone numbers, security clearance status, and other military information about individuals assigned to the squadron. Some names on the alpha roster were circled and these names corresponded to the fraudulent accounts. The Post-it notes and paper only contained names and social security numbers. An informant told police that the appellant supplied others with information to establish the accounts.

In announcing her findings, the judge said she found the appellant guilty of willful dereliction with regard to the Privacy Act information found in his car, but noted she would have only found the appellant guilty of negligent dereliction with regard to both Post-it notes. The appellant seizes on the judge's comments in arguing that the evidence is factually and legally insufficient to affirm his conviction for willful dereliction of duty.

The test for legal sufficiency is whether, considering the evidence in the light most favorable to the prosecution, any rational fact finder could have found all the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307 (1979); *United States v. Turner*, 25 M.J. 324 (C.M.A. 1987). When testing for legal sufficiency, we must "draw every reasonable inference from the evidence of record in favor of the prosecution." *United States v. McGinty*, 38 M.J. 131, 132 (C.M.A. 1993) (quoting *United States v. Blocker*, 32 M.J. 281, 284 (C.M.A. 1991)). The test for factual sufficiency is whether, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, we ourselves are convinced of the accused's guilt beyond a reasonable doubt. *Turner*, 25 M.J. at 325.

The appellant was charged with willful dereliction of duty by failing to safeguard the personal information of squadron members on divers occasions. The evidence is both legally and factually sufficient to affirm the judge's finding of guilty on this specification. The appellant provided personal information about members of the squadron in order to further a scheme involving identity theft and fraudulent cellular telephone accounts. The notations on the alpha roster sheets established his involvement in this scheme.

Furthermore, through his training and experience he knew this information should not be provided to individuals who were not authorized access. The judge's comments about the Post-it notes found in his car do not affect her findings of guilty concerning the remainder of the compromised information.

The approved findings and sentence are correct in law and fact and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ; *Turner*, 25 M.J. at 325. Accordingly, the approved findings and sentence are

AFFIRMED.

Judge PECINOVSKY did not participate.

OFFICIAL

HEATHER D. LABE
Clerk of Court